

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re Flint Water Cases.

Judith E. Levy
United States District Judge

This Order Relates To:

Bellwether III
Case No. 17-10164

SCHEDULING ORDER FOR BELLWETHER III TRIAL

On May 20, 2022, Bellwether III Plaintiffs and Defendants VNA, LAN, and EPA submitted proposed pretrial and trial schedules for the Bellwether III trial. (ECF No. 851 (Plaintiffs' proposal); Defendants' proposal was submitted to the Court via e-mail.)

VNA suggests that trial dates should not be scheduled until "any appeal of the current bellwether trial is exhausted." VNA states that, as a compromise, VNA "is willing to complete discovery and prepare the cases for trial pending the resolution of any appeal." Second, VNA states that the next trial "should be on the adult bellwether cases (adult personal injury and property damage claims)[]." Third, VNA "strongly opposes Plaintiffs' suggestion that all ten Plaintiffs should be tried

together, and submits [that] no trial should have more than four Plaintiffs[.]”

VNA’s first point, that the Court delay all cases until the final resolution of the first bellwether case is denied. If the Court were to grant VNA’s request, it would likely delay the trial well over a year. The Flint Water Crisis began in 2014, and many of the bellwether cases have been pending for over five years. Memories fade, witnesses move, and trials become significantly more difficult to conduct as time goes on.

VNA’s second point, that the next trial “should be on the adult bellwether cases (adult personal injury and property damage claims)[.]” is also denied. The cases referred to as Bellwether III cases are closer to being ready for trial and will therefore be next, followed by the cases referred to as Bellwether II. As set forth in the Class case scheduling order, if necessary, the Court may explore having another judge preside over this bellwether trial so that more than one trial can take place at the same time. (*See* No. 16-10444, ECF No. 2172, PageID.72938.)

VNA’s third point, that it opposes having ten bellwether Plaintiffs tried together and that no more than four at a time is denied. The parties

are directed to select eight Plaintiffs for the Bellwether III trial. This will allow more cases to go forward, yet keep the trial at a reasonable length.

Next, the United States submitted a position statement with the proposed scheduling order. The United States “has serious concerns with being merged into a trial,” of the ten bellwether Plaintiffs. The United States argues that it was not involved in the bellwether selection process for these ten Plaintiffs, who were selected as part of the first bellwether group. Nor does the United States know whether these ten Plaintiffs are plaintiffs in *Meeks v. United States of America* (E.D. Mich. Case No. 17-11165; *see* E.D. Mich. Case No. 17-10164, ECF No. 294 (consolidation order)), or whether litigation of their claims will be “representative of and useful to the adjudication of the other Federal Tort Claims Act” cases.¹

The United States also proposes that the Court decide its pending motion for interlocutory appeal and then allow it 30 days to submit a proposed schedule for trial. The Court’s Order on the United States’ motion for interlocutory appeal is forthcoming and their request is granted.

¹ The Court understands that the United States has requested this information from *Meeks*’ Plaintiffs’ counsel.

The Court has considered the parties' scheduling proposals and orders as follows.

<u>Event</u>	<u>Deadline/ Date Range</u>
Completion of any Remaining Merits Discovery	September 2, 2022 to November 18, 2022
Plaintiffs' Expert Reports + Complete Disclosures	December 2, 2022
Plaintiffs' Expert Depositions and Defendants' IMEs of Plaintiffs (if needed)	December 16, 2022 to January 13, 2023
Defendants' Expert Reports + Complete Disclosures	February 15, 2023
Plaintiffs' Reply Expert Reports	March 3, 2023
Defendants' Reply Expert Reports	March 16, 2023
Defendants' Expert Depositions (shall be limited only to those experts for whom the parties submit new or additional reports)	April 3, 2023 to April 25, 2023
Reply Expert Report Depositions	April 25, 2023 to May 2, 2023
Daubert and Summary Judgment Motions—Opening Briefs	May 19, 2023
Daubert and Summary Judgment Response Briefs	June 23, 2023
Daubert and Summary Judgment Reply Briefs	July 7, 2023
Motions in Limine—Opening Briefs	November 6, 2023
Deadline for parties to submit joint proposed jury questionnaire to the Court and hearing	TBD

Deadline for Parties to send 250 copies of Juror Questionnaires to Judge Levy's Chambers in Ann Arbor, Michigan	TBD
Plaintiffs to Submit to Defendants Draft Joint Pretrial Order (includes witness list and exhibit list)	March 10, 2023
Jurors Summoned in Court to Answer Questionnaires	TBD
Hearing Regarding Excusals Based on Jury Questionnaire Responses	TBD
Motions in Limine Response Briefs	November 20, 2023
Motions in Limine Reply Briefs	November 29, 2023
Oral Argument on Daubert Motions	TBD
Defendants to Submit to Plaintiffs Draft Joint Pretrial Order (includes witness list and exhibit list) and engage in meet and confer	November 24, 2023
Oral Argument on Summary Judgment Motions	TBD
Oral Argument on Motions in Limine	TBD
Deposition Designations (due for exchange between parties)	TBD
Parties to submit Voir Dire Questions, Proposed Preliminary Jury Instructions	December 4, 2023

Parties to submit Joint Final Pretrial Order	December 8, 2023
Objections to Deposition Designations and Counter-Designations (due for exchange between parties)	TBD
Deadline for Submitting Deposition Designations Matrices and Highlighted Transcripts to the Court	TBD
Deadline for Court to Inform Jury Department of Excusals Based on Questionnaires	TBD
Final Pretrial Conference, hearing on motions in limine	December 18, 2023 10:30 am
Hearing Regarding Misc. Pretrial Matters (if needed)	January 9, 2024 10:30 am
First Day of Trial/Voir Dire	January 10, 2024 8:30 a.m.

Hearings will be conducted in person in Ann Arbor, Michigan unless the Court notifies the parties in advance otherwise.

IT IS SO ORDERED.

Dated: June 21, 2022
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 21, 2022.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager